STATE OF MICHIGAN

COURT OF APPEALS

VITO DICARLO, JR., and BERNADINE DICARLO, Plaintiffs-Appellants, v CITY OF MONROE, DAVID M. TUBBS and JOSEPH H. LEHMANN, Defendants-Appellees.	UNPUBLISHED March 25, 2014 No. 313011 Monroe Circuit Court LC No. 11-031270-CZ

Before: M. J. KELLY, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Plaintiffs appeal by right the trial court's order granting summary disposition to defendants in this trespass and conversion action. We affirm.

This appeal arises from the issuance of blight citations arising from improperly parked motor vehicles and debris on plaintiffs' property. Plaintiffs had a history of being issued citations for noncompliance with local ordinances dating back to 2002. After issuing the citations and plaintiffs failure to abate the conditions, defendants removed the improper items. Plaintiffs filed suit, alleging trespass and conversion, and contended that they were deprived of due process of law for the failure by defendants to present the violations in district court prior to any removal. The trial court granted summary disposition in favor of defendants. Although plaintiffs do not address the underlying basis of the trial court's ruling, *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 281; 689 NW2d 145 (2004), we nonetheless address the issue raised on appeal.

Plaintiffs argue that their due process rights were violated because they did not receive a hearing before a district court judge prior to defendants' removal of the "blight" from their yard. We disagree.

"Whether due process has been afforded is a constitutional issue that is reviewed de novo." *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 277; 831 NW2d 204 (2013). Further, "[t]his Court reviews de novo a trial court's decision on a motion for summary disposition." *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008).

No person may be deprived of life, liberty, or property without due process of law. US Const, Am XIV; Const 1963, art 1, § 17; *Elba Twp*, 493 Mich at 288. This guarantee limits arbitrary power, *Whitman v Lake Diane Corp*, 267 Mich App 176, 181; 704 NW2d 468 (2005), and is to be construed liberally in favor of the citizen, *Lockwood v Comm'r of Revenue*, 357 Mich 517, 557; 98 NW2d 753 (1959). Typically, Michigan's due process clause is construed no more broadly than its federal counterpart. *English v Blue Cross Blue Shield of Mich*, 263 Mich App 449, 459-460; 688 NW2d 523 (2004).

"A procedural due process analysis requires a dual inquiry: (1) whether a liberty or property interest exists which the state has interfered with, and (2) whether the procedures attendant upon the deprivation were constitutionally sufficient." *Hinky Dinky Supermarket, Inc v Dep't of Community Health*, 261 Mich App 604, 606; 683 NW2d 759 (2004) (citation omitted). Generally, due process in civil cases is satisfied when the citizen is provided notice of the nature of the proceedings and a meaningful opportunity to be heard by an impartial decision-maker, *id.*, but it does not always require a prior hearing or adversarial proceeding before the deprivation of a property interest, see e.g., *Westland Convalescent Ctr v Blue Cross & Blue Shield of Mich*, 414 Mich 247, 269; 324 NW2d 851 (1982) (Opinion by FITZGERALD, J.). "Due process is satisfied when interested parties are given notice through a method that is reasonably calculated under the circumstances to apprise them of proceedings that may directly and adversely affect their legally protected interests and afford them an opportunity to respond." *Wortelboer v Benzie Co*, 212 Mich App 208, 218; 537 NW2d 603 (1995).

The ordinance at issue provides, in pertinent part:

> It shall be the duty of every owner . . . of any real property or personal property within the City of Monroe, whether on public or private property, including, but not limited to, sidewalks in their entirety and public streets and alleys to their centers, to provide for the abatement, elimination or removal of any and all blight and/or blighted conditions as listed in § 210-2 of the Code of the City of Monroe. [Monroe Ordinance § 210-1B.]

Additionally, the ordinance prohibits the storage of a motor vehicle outdoors if the motor vehicle is inoperative, unlicensed, or not parked on an approved hard surface. Monroe Ordinance § 210-2A(14). The ordinance further provides that "blight" includes "junk," i.e., parts of machinery, motor vehicle parts, and the like, and "refuse," i.e., cement pieces, cut trees and branches, or commercial wastes. Monroe Ordinance § 210-2A(16). Upon violation of the ordinance, an enforcement officer shall issue either a "municipal civil infraction notice" or a "municipal civil infraction citation." Monroe Ordinance § 210-4A. Should the owner of the blighted land fail or refuse to admit responsibility and pay the fine listed in the notice, the owner *may* be issued a municipal civil infraction citation by the enforcement officer and the violation will be adjudicated by the district court. Monroe Ordinance § 210-4D. Finally, the Director of Public Services and his or her authorized representatives are

> empowered to enter upon any premises in the City for the purpose of removing, destroying, or disposing of any junk motor vehicle, building materials or accumulation of junk, trash, rubbish, garbage or refuse thereon, when the real property owner . . . [has] not, within the three-day civil infraction notice period,

> remedied the blighted condition or requested that the enforcing officer issue a civil infraction citation, as provided in § 210-4 above. [Monroe Ordinance § 210-5A.]

In this case, plaintiffs were provided with multiple "notices" of a municipal civil infraction. The back of each notice stated that if plaintiffs wished to deny responsibility and have a hearing, they must contact the city of Monroe treasurer's office on or before the date specified on the front of the ticket. Only then would a municipal civil infraction citation be issued and filed with the district court, giving plaintiffs the right to either an informal or formal hearing before either a magistrate or a judge.

Plaintiffs' due process rights were not violated by defendants' removal of "blight" materials from plaintiffs' property without a prior hearing in the district court. Neither party disputes that plaintiffs had a property interest in the materials taken from their yard and plaintiffs' interest in these items was interfered with by the government, i.e., the city of Monroe. *Hinky Dinky Supermarket, Inc*, 261 Mich App at 606. Therefore, the issue centers on "whether the procedures attendant upon the deprivation were constitutionally sufficient." *Id.*

First, plaintiffs received sufficient notice from defendants. Defendants twice sent plaintiffs both a notice of violation and an accompanying letter explaining the defects on plaintiffs' property. In the letters, a city employee explained that if the blighted conditions were not remedied, defendants would remove the noncompliant vehicles and the blight from plaintiffs' property. Further, the notices informed plaintiffs of the nature of the action, i.e., a civil infraction, and explained the steps plaintiffs should take if they wished to have a hearing. Finally, it should be noted that plaintiffs do not dispute their receipt of adequate notice "appris[ing] them of proceedings that may directly and adversely affect their legal interests." *Wortelboer*, 212 Mich App at 218.

Plaintiffs contend that their due process rights were violated because they did not have an opportunity to plead their case in front of the district court judge prior to defendants' removal of their property. Again, due process requires a meaningful opportunity to be heard by an impartial decision-maker, *Hinky Dinky Supermarket, Inc*, 261 Mich App at 606, but does not always require a prior hearing or adversarial proceeding before the deprivation of a property interest, *Westland Convalescent Ctr*, 414 Mich at 269. In this case, plaintiffs were provided the *opportunity* to contest the notice, as long as they contacted the city treasurer within the time period allotted on the notice. Plaintiffs, through their failure to contact the treasurer, essentially waived their right to a hearing. Once the notice period ended, defendants were empowered to enter upon plaintiffs' land and remedy the blighted condition. Monroe Ordinance § 210-5A. The lack of a prior hearing did not deprive plaintiffs of procedural due process.

Affirmed. Defendants, having prevailed, may tax costs. MCR 7.219.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood